



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In Opposition to:

H.B. No. 5273 (RAISED) An Act Concerning Eyewitness Identification

Joint Committee on Judiciary
March 10, 2010

The Division of Criminal Justice would respectfully request that the Committee reject H.B. No. 5273, *An Act Concerning Eyewitness Identification*. The Division opposes this bill for the very same reasons it has opposed similar legislation in the past – it represents an unwarranted intrusion into law enforcement practices that should be determined by the law enforcement profession under the ever-present and painstakingly thorough review by the courts.

The bill is premised on the misguided belief that what is known as a “sequential” presentation produces a more accurate result in the identification of an individual. In such a procedure, the photographs or actual people are presented to the witness one at a time instead of as a group, or simultaneous presentation. (It should be noted that for all practical purposes this procedure in Connecticut virtually always involves the use photographs; a “live” lineup is an extreme rarity in this state.) Despite the premise of the bill, there is no valid study that has conclusively found that either one of the simultaneous or sequential identification is more accurate than the other. As the Division has noted in the past very little of the study in this area has involved actual witnesses of crime or other actual witnesses. The general mode of study has been to take undergraduate psychology students, show them a grainy video of a simulated crime, and then to ask them to identify the perpetrator in a photo array.

Absent any valid scientific evidence the Division would respectfully submit that H.B. No. 5273 is premature at the very best. Not only is there no proof to support the concept of the bill, it also ignores the good-faith effort that is being undertaken on a continuing basis by the law enforcement community of this state to utilize the best professional practices. The Division of Criminal Justice, in conjunction with other law enforcement agencies, has developed a protocol for eyewitness identification that incorporates “double-blind” procedures when practicable. This protocol is taught on an ongoing basis through the Police Officer Standards and Training Council (POST) to municipal police officers and in Connecticut State Police training as well. A copy of a memorandum on this matter that was issued to police departments in the Judicial

District of Windham is attached; this is an example of the policy established by the State's Attorneys in each of the judicial districts throughout the state.

In conclusion, the Division would respectfully ask that the Committee reject H.B. No. 5273 and this attempt to mandate by legislation investigative practices that should be established based on valid research and the best professional practices. We would be happy to provide any additional information or to answer any questions the Committee might have.

Respectfully submitted,

Kevin T. Kane
Chief State's Attorney



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

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TO: Chiefs of Police and Commanding Officers, Judicial District of Windham

FROM: Patricia M. Froehlich, State's Attorney

RE: Eyewitness Identification Protocol

DATE: September 29, 2005

As you may have heard, the State's Attorney for each of the 13 Judicial Districts, along with the Chiefs of Police, P.O.S.T., the State Police and the Chief State's Attorney, have for the past several months analyzed eyewitness identification procedures. After this thorough analysis of court decisions both in Connecticut and other states, it was agreed we would make changes to ensure the accuracy of eyewitness identification procedures. On September 27 the Connecticut Supreme Court officially released an opinion, State v. Ledbetter, in which they too addressed eyewitness identification procedures.

More importantly, the Supreme Court announced a new rule: if the police in future cases fail to appropriately instruct the witness that the perpetrator may or may not be present in the procedure (e.g., photo array), then the trial judge must specifically instruct the jury regarding the consequences of that failure (i.e., the results of psychological studies).

The following is the eyewitness identification procedure which will be used throughout the State for every eyewitness identification procedure, including live show-up identifications and photo array identifications:

The officer(s) involved must

1. avoid words, gestures, or expressions which could influence the witness' selection. If practical, the officer should take a position where the witness cannot see the officer;
2. advise the witness that the person may or may not be present;
3. advise the witness that the police will continue to investigate the incident whether the witness identifies someone or not;
4. avoid making any comment on the witness' selection if the witness makes an identification;
5. document the date, time of the identification procedure, and the names of anyone present.
6. utilize the attached forms for every eyewitness photo identification.

The attached forms include instructions, some of which are set forth above. It is important that each officer participating in an eyewitness identification procedure follow these instructions. The forms should be attached to the photo array afterward and forwarded to this office upon arrest. The forms are specifically somewhat generic, so that they will fit many different types of eyewitness identification procedures. If the witness makes an identification, officers must note in the "comments" section why the witness identified that person. For example, include witness statements such as 'this is the guy who attacked me' or "this is the person who ran away..."

It is imperative that every law enforcement officer follow these instructions in each and every case in which an eyewitness identification is necessary. Failure to do so will result in the trial judge instructing the jury that

...failing to warn the witness that the perpetrator may or may not be in the procedure increases the likelihood that the witness will select one of the individuals in the procedure, even when the perpetrator is not present. Thus, such behavior on the part of the procedure administrator [law enforcement officer] tends to increase the probability of a misidentification.

See Ledbetter.

To All Law Enforcement Agencies

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September 29, 2005

I am confident that using the agreed-upon procedure and new forms will ensure that the trial court will not have to issue such an instruction in any of our cases. Please note that the sample forms are dated in the lower corner. When you create your own agency's version of the form, please be sure to date them as well and to continue to use this version of the forms until further notice.

Please feel free to contact me if you have any questions, comments or suggestions. If anyone would like to read Ledbetter in its entirety I would be happy to provide you with a copy.

